

Serial No. 09/126,884

REMARKS

In the Advisory Action, the Examiner noted that claims 1-3, 5-10 and 12-26 are pending, of which claims 1-3, 5-10 and 12-26 stand rejected. By this amendment, claim 1 has been amended, claims 13-15 have been cancelled, claims 2-3, 5-10, 12, and 16-26 continue unamended, and new claims 27-29 have been added. No new matter has been entered. In view of the amendments presented above and the following discussion, the Applicants submit that none of the claims now pending in the application are obvious under the provision of 35 U.S.C. §103. Thus, the Applicants believe that all of these claims are now in allowable form.

It is to be understood that the Applicants do not acquiesce to the Examiner's characterizations of the art of record or to Applicants' subject matter recited in the pending claims. Further, Applicants are not acquiescing to the Examiner's statements as to the applicability of the art of record to the pending claims by filing this submission.

Rejections**35 U.S.C. 103**

The Examiner has rejected claims 1-3, 5-10 and 12-26 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,246,701 issued June 12, 2001 ("Slattery") in view of U.S. Patent No. 6,327,275 issued December 4, 2001 ("Gardner"). Specifically, the nature of the Examiner's rejection has not changed from that of the previous Office Action. As such, the details will not be repeated herein and can be seen in Applicants' prior Response. Applicants continue to respectfully traverse the rejection. It is submitted that the disclosures of Slattery and Gardner, either alone or in combination, are insufficient to adequately teach or suggest the claimed elements as identified by the Examiner. The case law previously cited by Applicants in the August 14, 2004 Response under 37 CFR 1.111 and the January 7, 2005 Response under 37 CFR 1.116 is still noted and may be reviewed at the Examiner's discretion. Succinctly, it is the Examiner's burden to prove the *prima facie* case of obviousness. As the cited references are not sufficient to make the appropriate substitution, combination or other

362060_1.DOC

Serial No. 09/126,884

modification, Applicants contend that the claims cannot be considered obvious in view of the combination of cited references.

Specifically, the primary issue with regard to the cited art is whether the cited art sufficiently discloses that a modified packet that is part of a transmitted output transport stream uses a matching time stamp of the received transport stream. Applicants have previously offered evidence that all previous Examiner-cited portions of Slattery and Gardner have been insufficient to support the Examiner's position regarding the teaching or suggestion of a matching time stamp as claimed in the subject invention. This includes, but is not limited to, Applicants' January 7, 2005 Response at about Page 3, Line 11 – Page 5, Line 18 with respect to Slattery and Page 5, Line 19 – Page 6, Line 15 with regards to Gardner. In the Advisory Action, the Examiner offers additional portions of the references in order to support his position. The Applicants respectfully submit, however, that these new offerings are insufficient to provide adequate teaching or suggestion, or otherwise make a substitution or modification of same, to result in the subject invention.

In the Advisory Action, the Examiner disagrees with Applicants' statement that Slattery does not discuss modification of a transport stream, but rather the initial creation and encoding of same. The Examiner asserts that data extraction and injection are used to modify input transport streams. In particular, the Examiner states that Slattery discloses (Slattery, Col. 10, Lines 32-40) insertion of null packets, and replacement of null packets with data packets, and asserts that Slattery implicitly discloses the matching time stamp because the null packets are replaced by data packets. The Applicants maintain, however, that insertion of null packets and replacement of null packets with data packets, as taught in Slattery, in no way implicitly discloses the matching time stamp of Applicants' invention.

In particular, with respect to null packet insertion, Slattery specifically teaches that "[e]ach of the null transport packets is inserted into a timeslot of the received TS to maintain the predetermined bit rate...when none of the compressed program data bearing transport packets are available for insertion..." (Slattery, Col. 10, Lines 32-36). In other words, Slattery merely teaches maintaining a predetermined bit rate using byte stuffing. Slattery provides absolutely no discussion as to whether a time stamp is

362060_1.DOC

Serial No. 09/126,884

assigned to the null packet. As such, maintaining a predetermined bit rate through null packet insertion, as taught in Slattery, is simply not processing a transport stream such that modified packets of an output transport stream use a matching time stamp of the received transport stream, as taught in Applicants' invention of at least claim 1.

Furthermore, with respect to null packet replacement, Slattery specifically teaches a processor replaces "...one or more of the null transport packets with another to-be-remultiplexed data bearing transport packet...contain[ing] PSI data or even bursty transactional data..." (Slattery, Col. 10, Lines 37-41). As defined in Slattery, PSI data comprises program specific information. In other words, the data packets that replace the null packets contain program data, and Slattery provides absolutely no discussion as to whether a time stamp is assigned to the data packet. As such, utilization of null packet bandwidth for transporting data packets (i.e., by replacing the null packets with program data packets), as taught in Slattery, is simply not processing a transport stream such that modified packets of an output transport stream use a matching time stamp of the received transport stream, as taught in Applicants' invention of at least claim 1.

Accordingly, it is respectfully submitted that there is no teaching, showing, or suggestion in Slattery of a modified packet using a matching time stamp of a received transport stream, as taught in Applicants' invention of at least claim 1. Furthermore, the portions of Slattery referenced by the Examiner in the Advisory Action can not be considered for the purposes of providing a possible teaching substitution or modification that can be used with another reference and subsequently combined to arrive at a conclusion of obviousness with respect to the overall invention.

The Examiner additionally asserts that Gardner explicitly discloses modification of the transport stream where the modified packet uses a matching time stamp. In particular, the Examiner specifically asserts that Gardner discloses an example in which packets B are replaced by no-data packets (Gardner, Col. 4, Lines 30-48) and that the gaps in the data stream (i.e., the no-data packets) may be filled by data from the local data signal (Gardner, Col. 5, Lines 6-8). As taught in Gardner, however, the local data signal may be "...obtained from local storage media, a video encoder, an audio encoder..." (Gardner, Col. 5, Lines 9-10). Nowhere in Gardner is there any teaching, showing, or suggestion of a matching time stamp, as taught in Applicants' claim 1, much

362060_1.DOC

Serial No. 09/126,884

less a matching time stamp of a received transport stream. As such, filling of gaps with data from a local data signal, as taught in Gardner, is simply not of modification of a packet using a matching time stamp of a received transport stream, as taught in Applicants' invention of at least claim 1.

Furthermore, Gardner discloses that the data rate can vary from packet to packet within the received data stream according to the relative frequency of occurrence of a given packet type, and provides a mechanism for remultiplexing the variable rate packets using a delay buffer and rate estimation. As taught in Gardner, the rate control signal is computed locally using an estimated data rate determined according to the fullness level of a smoothing buffer. Moreover, Gardner specifically teaches that the output data rate is "near the rate determined by the rate estimator." (Gardner, Col 7, Lines 17-18). Computation of an estimated data rate for controlling an output stream data rate, as taught in Gardner, is simply not modification of a packet using a matching time stamp of a received transport stream. Nowhere in Gardner is there any teaching or suggestion of a modified packet using a matching time stamp of a received transport stream, as taught at least in Applicants' invention of claim 1.

The Applicants respectfully submit that it is clear that Gardner is more concerned with rate control of the transport stream than with the timing of programs contained therein. Accordingly, Applicants respectfully submit that Gardner does not address the problem of modifying a program within a transport stream. Rather, Gardner is directed towards the wholly different problem of remultiplexing packets provided at variable rates using delay buffers and rate estimation. Furthermore, Gardner is completely devoid of any teaching, showing, or suggestion of modification of a packet using a matching time stamp of a received transport stream, as taught in Applicants' invention of at least claim 1. Therefore, one of ordinary skill in the art would not look to Gardner in an attempt to solve a problem related to output transport stream modification and the specific timing problems associated therewith.

As such, the combination of Slattery with Gardner does not result in the subject invention. Rather, the combination of the references would merely produce a system for replacing null packets with program data packets and smoothing the variable data rate of the transport stream using rate estimation before transmission. This is plainly not

362060_1.DOC

Serial No. 09/126,884

what the subject invention claims. Furthermore, there is no specific teaching, showing, or suggestion of time stamps as claimed in the Applicants' invention in either of the references. Accordingly, it is respectfully submitted that the combined references fail to teach, show, or suggest the Applicants' invention as a whole.

As such, the Applicants submit that independent claims 1, 7, 12 and 27 are not obvious and fully satisfy the requirements under 35 U.S.C. §103 and are patentable thereunder. Furthermore, claims 2, 3, 5, 6, 8-10, 11, 16-26, and 28-29 depend from independent claims 1, 7 and 27 and recite additional features thereof. As such, and for the same reasons as discussed above, the Applicants submit that these dependent claims also are not obvious and fully satisfy the requirements under 35 U.S.C. §103 and are patentable thereunder. Therefore, the Applicants respectively request that the rejections be withdrawn.

382060_1.DOC

Serial No. 09/126,884

CONCLUSION

Thus, the Applicants submit that none of the claims presently in the application are obvious under the provision of 35 U.S.C. §103. Consequently, the Applicants believe that all these claims are presently in condition for allowance. Accordingly, reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Eamon J. Wall, Esq. at (732) 530-9404 so appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,



Eamon J. Wall
Registration No. 39,414
Attorney for Applicant(s)

Dated: 5/6/05

CUSTOMER #46,363
MOSER, PATTERSON & SHERIDAN, LLP
595 Shrewsbury Avenue, Suite 100
Shrewsbury, New Jersey 07702
732-530-9404 - Telephone
732-530-9808 - Facsimile